

CHAPTER 463 PRIVATE DETECTIVES AND GUARDS

SECTION

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§463-1 Definitions. As used in this chapter:

"Board" means the board of private detectives and guards described in section 463-2.

"Detective", "private detective", or "investigator" means a licensed person qualified to obtain information and evidence not readily or publicly accessible.

"Detective agency" or "private detective agency" means a licensed firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association engaged in the private detective business.

"Guard" means a licensed uniformed or nonuniformed person responsible for the safekeeping of a client's properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping.

"Guard agency" means a licensed firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association engaged in the guard business.

"Principal detective" means a licensed detective designated as the detective agency's primary licensee who is fully responsible for the direct management and control of the agency.

"Principal guard" means a licensed guard designated as the guard agency's primary licensee who is fully responsible for the direct management and control of the agency.

§463-2 Board of private detectives and guards; appointment; qualifications; term. Appointment and removal. There shall be a board of detectives and guards consisting of seven members, six of whom shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. The terms of the members shall be for four years. Each term shall commence on July 1 and expire on June 30. No person shall be appointed consecutively to more than two terms, provided that membership shall not exceed eight consecutive years. The director of commerce and consumer affairs shall be an ex officio nonvoting seventh member of the board and may designate a representative to sit in the director's stead.

Of the six appointed members, two shall be chiefs of police of any of the four counties, two shall be private citizens not engaged in any of the licensed practices, and two shall be persons actively engaged in any of the licensed practices; provided that one person shall be a licensed private detective and one person shall be a licensed guard.

§463-3 Policy; powers and duties. It is the policy of this State to protect the general public from unlawful and unethical conduct and operation of the business of private detective and guards. In addition to any other powers and duties authorized by law, the board of detective and guards may adopt, amend, or repeal rules, which shall have the force and effect of law, relating to qualifications for licensing of private detectives and guards, to the conduct and operation of the businesses of such license, and to the revocation or suspension for cause of such licenses. The board shall consult with appropriate state and federal agencies and any appropriate industry or trade organization in establishing those rules. The rules so established shall be on the basis of what the board deems best suited to the public interest. The board also shall examine applicants for private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter.

§463-4 Procedure in revocation or suspension of licenses. (a) Actions to revoke or suspend licenses granted under this chapter shall be subject to chapter 91 and shall be commenced by a notice of hearing.

(b) The notice of hearing shall be served by certified mail to the licensee's last known business address.

(c) The licensee shall be given sixty days from the date of mailing the notice in which to answer.

§463-5 Private detectives and detective agencies; license required. (a) No individual shall engage in the business of private detective, represent oneself to be, hold oneself out as, list oneself, or advertise as a private detective or as furnishing detective or investigating services without first obtaining a license as a private detective from the board and paying the application and license fees.

(b) No firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association shall engage in the business of private detective, represent itself to be, hold itself out as, list itself, or advertise as a private detective agency or bureau or as furnishing detective or investigating services without first obtaining a license as a private detective agency from the board and

paying the application and license fees. A detective agency shall have a principal detective who shall be a resident of the State.

§463-6 Private detectives and detective agencies; qualifications for license. (a) The board may grant a private detective license to any suitable individual, or a detective agency license to any suitable firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal detective of a firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association, shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time investigational work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; and
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order.

(b) A detective agency may employ as many agents, operatives, and assistants in an investigative capacity and as necessary for the conduct of business; provided that the principal detective shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the detective agency's business. The principal detective shall be responsible for the direct management and control of those employees. These employees shall not be required to have private detective licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, may conduct a criminal history records check of all new employees directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic and that the employee is employed in an investigative capacity.

§463-7 Guard and guard agencies; license required. (a) No individual shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent oneself to be, or hold oneself out as such without first obtaining a license as guard from the board and paying the application and license fees.

(b) No firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent itself to be, hold itself out as, list itself, or advertise as a guard agency without first obtaining a license as a guard agency from the board and paying the application and license fees. A guard agency shall have a principal guard who shall be a resident of the State.

§463-8 Guards and guard agencies; qualifications for license. (a) The board may grant a guard license to any suitable individual, or a guard agency license to any suitable firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal guard of a firm, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association, shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time guard work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; and
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order.

(b) A guard agency may employ as many agents, operatives, and assistants in a guard capacity and as necessary for the conduct of business; provided that the principal guard shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the guard agency's business. The principal guard shall be responsible for the direct management and control of those employees. These employees shall not be required to have guard licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, may conduct a criminal history records check of all new employees directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic and that the employee is employed in a guard capacity.

§463-8.5 Guards; concurrent employment. No person shall engage in the business of guard when the guard work is concurrent with other duties performed under the agreement of employment or

when the guard work is not the principal fact of the employment without first obtaining a license as a guard.

§463-9 Form of application for license. Application for a license shall be made on a form prescribed by the board which may require a statement of the applicant's full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant's background, character, competency, and integrity as it deems appropriate, and shall request criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.

§463-10 Licenses and renewal of licenses; establishment of fees by rule. The license shall state the name and address of the principal office or place of business of the licensee, the name under which the licensed business is to be conducted, and the name of the principal detective or principal guard, if the licensee is a detective agency or guard agency.

The holder of a license issued by the board who continues in active practice shall biennially renew the license and pay the renewal fee not later than June 30 of each even-numbered year.

The holder of an expired license may have the license restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee.

§463-11 Association with government not to be implied. No licensee shall use any designation or trade name which implies any association with any municipal, county, state, or territorial government or the federal government, or any agency thereof; nor shall a licensee or employee of any licensee wear any badge or uniform capable of being associated with the badge or uniform of any government law enforcement organization.

§463-12 Bond. Each licensee shall give to the board a bond in the sum of not less than \$5,000 executed by the applicant as principal and by a surety company authorized to do business in the State as surety. The bond shall be in such form as the board may prescribe, conditioned upon the honest conduct of the business of the licensee, and the right of any person injured by the wilful, malicious, or wrongful act of the licensee to bring in the person's own name an action on the bond.

§463-13 Exemptions. This chapter does not apply to any person, firm, company, partnership, or corporation or any bureau or agency whose business is exclusively the furnishing of information as to the business and financial standing and credit responsibility of persons, firms, or corporations, or as to personal habits and financial responsibility, of applicants for insurance, indemnity bonds, or commercial credit, or a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship, or an attorney at law in performing the attorney's duties as such attorney at law.

§463-14 Contingent fee. Compensation for services of detectives or guards shall not be based upon promissory notes or property other than that allegedly stolen which have been obtained from suspects or others in their behalf as restitution.

§463-15 Penalties. Any employee or former employee of a licensee who divulges any information gained by the employee or former employee in the course of such employment except as the employee's or former employee's employer directs or as required by law, or who wilfully makes a false report to the employee's or former employee's employer, shall be fined not more than \$100 or imprisoned not more than six months, or both. Any person who violates any other provision of this chapter or any rule or regulation adopted by the board of detectives and guards under this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both.

§463-16 REPEALED.

§463-17 Provisions severable. If any provision of this chapter or the application thereof to any person or circumstance should be held invalid by any court, the invalidity shall not affect the other provisions or applications of the section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.